

HONORABLE FRED VAN SICKLE

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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

**NO. CV-07-088-FVS**

FEATURE REALTY, INC., a Nevada  
corporation,

Plaintiff,

vs.

CITY OF SPOKANE, a Washington  
municipal corporation,

Defendant

CITY OF SPOKANE,

Third Party Plaintiff

vs.

DAVIS COMMUNICATIONS, Inc., *et*  
*al.*,

Third Party Defendants

State Court No. 07-2-00991-9

~~XXXXXXXX~~  
Proposed Order Granting Dismissal  
of Action

DATE: May 8, 2009

TIME: 11:30 A.M.

~~Proposed~~ Order Dismissing  
Action

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1 FIBERLINK, INC., d/b/a COLUMBIA  
2 FIBER SOLUTIONS, a registered  
3 trademark, a/k/a COLUMBIA FIBER,

4 Cross-complainant,

5 vs.

6 FEATURE REALTY, INC., a Nevada  
7 Corporation.

8 Cross-defendant.  
9

10 Plaintiff, Feature Realty, Inc., ("Feature") commenced this action in the  
11 Superior Court of the County of Spokane, Case # 07-02-009919-9 by a  
12 complaint filed on March 2, 2007. The action was removed by defendant City  
13 of Spokane ("City") which filed a Notice of Removal filed in the State Court on  
14 March 22, 2007. On June 20, 2007, the City answered the complaint of  
15 Feature, filed a Counter Claim against Feature, and a Third Party Complaint  
16 against Third Party Defendants Davis Communications, Inc. ("Davis") and  
17 FiberLink, Inc. ("FiberLink"). *Dkt. #14*. The Counter Claim and Third Party  
18 Complaint generally alleged violations of the Spokane Municipal Code  
19 10.27.310 and 47 USC 541 (b) because the City alleged that none of the  
20 parties counter-defendant or third party defendant held a cable franchisee  
21 granted by the City and cable related taxes and fees had not been paid by  
22 any of the said defendants. Fiberlink answered the Third Party Complaint and  
23 filed a Cross-Claim against Feature alleging breach of contract and  
24

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1 declaratory relief. *Dkt. #44*. Feature answered the Cross-Claim of Fiberlink  
 2 denying all allegations of default, etc. *Dkt. #58*.

3 Motions for Summary Judgment and Cross-Motions were filed by the  
 4 parties but never heard by the Court. Instead, December 11, 2007, the Court  
 5 remanded the matter of Feature's administrative tax appeal back to the  
 6 Spokane County Superior Court because it raised exclusively non-federal  
 7 issues. The Court additionally stayed the remainder of the case until the  
 8 Superior Court had ruled on the remanded portion. April 1, 2008, the Superior  
 9 Court filed its ruling granting summary judgment to the City and denying  
 10 Feature's writ of review.

11 Feature and the City then entered into a Settlement Agreement on May  
 12 27, 2008, by which Feature agreed to provide conforming cable service to the  
 13 Canyon Bluffs project and pay applicable cable services related taxes and  
 14 fees to the City. The Court extended time for performance by Feature, issuing  
 15 a Minute Order on February 10, 2009, in which it granted Feature until May  
 16 5, 2009, subsequently continued by order of court to May 8, 2009, to finish its  
 17 contract negotiations with Comcast, holder of a City cable franchise, to furnish  
 18 cable services to the project, or the Court would note a date to grant a  
 19 proposed order of the City to enjoin all future violations of the Spokane  
 20 Municipal Code, Title 10, Chapter 27 and 47 USC 541 (b) by Feature, Davis  
 21 or FiberLink. The Court further ordered a Joint Status Conference Report be  
 22 filed with this Court on or before April 28, 2009, reporting on the status of the  
 23 Feature/Comcast negotiations and change over to Comcast service.

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1 Feature confirmed that on April 16, 2009, the optic fiber line(s) of  
 2 FiberLink, which carried cable signals from Davis to the Canyon Bluffs  
 3 Project, were cut and that a complete change over to Comcast cable service  
 4 to the entire Canyon Bluffs project has occurred. Feature has confirmed to the  
 5 City and to the Court that the contract between Feature and Comcast has  
 6 been signed and is a long term contract to provide cable services to the  
 7 Canyon Bluffs project by Comcast, and that no ability exists for the continued  
 8 transmission of cable signals from Davis through the optic fibers of FiberLink.

9 Based on the foregoing and the stipulation of the parties, the Court finds  
 10 that all issues have been resolved and all claims are hereby dismissed with  
 11 prejudice, except the claims of Fiberlink against Feature for breach of contract  
 12 which are hereby dismissed without prejudice.

13 Date: May 4, 2009

14  
 15 s/ Fred Van Sickle

16 Fred Van Sickle  
 17 U. S. District Court,  
 18 Eastern District of Washington  
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